

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT M. JONES and IVY JONES,

Plaintiffs-Appellants,

UNPUBLISHED
August 8, 2006

V

CARTER FOOD CENTER,

Defendant-Appellee.

No. 268756
St. Clair Circuit Court
LC No. 05-001113-NI

Before: Whitbeck, CJ., and Hoekstra and Wilder, JJ.

PER CURIAM.

In this premises liability case, plaintiffs appeal as of right from the trial court's order denying their motion for reconsideration of its prior order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 31, 2005 plaintiff Ivy Jones was a customer at defendant's store. Mrs. Jones tripped and fell when her foot was caught in a bunched-up rubber-backed rug that she had pushed her shopping cart over.¹ As a result of the fall, she sustained a broken elbow and bruised knees. She brought this lawsuit, claiming that the rug was old and unraveling, and that defendant knew or should have known of its unsafe condition. Plaintiffs also argued that Mrs. Jones could not see the rug when she was pushing her shopping cart full of groceries, as defendant encourages patrons to do.

Defendant filed a motion for summary disposition arguing that plaintiffs did not establish that defendant caused or had knowledge of a hazardous condition concerning this rug. Defendant also argued that the condition of the rug was open and obvious.

The trial court did not reach the issue concerning the open and obvious doctrine. Rather, it granted summary disposition based on its finding that no evidence was presented concerning

¹ Plaintiff Albert Jones' claim is based on loss of consortium due to the injuries to Mrs. Jones. His claim is therefore derivative of Mrs. Jones' claim, and the legal arguments apply to both plaintiffs.

the age of the rug or whether its age contributed to the condition that caused Mrs. Jones to fall. The trial court determined that plaintiffs failed to establish that defendant knew of the condition of the rug or should have known of it prior to her fall.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Graham v Ford*, 237 Mich App 670, 672; 604 NW2d 713 (1999).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. When deciding a motion for summary disposition, we consider pleadings, affidavits, depositions, admissions, and other documentary evidence. In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Id.* (Internal citations omitted).]

To establish a prima facie case of negligence, a plaintiff must prove: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached the duty; (3) the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

Storekeepers have a duty to keep their aisles reasonably safe for customers. *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). In a premises liability case, a plaintiff must show either that the defendant caused the unsafe condition or that defendant knew or should have known of such condition. *Id.* Such knowledge may be inferred by evidence showing that the condition existed long enough for the storekeeper to have discovered it. *Id.*

In this case, defendant supported its motion for summary disposition with deposition testimony and documentary evidence concerning Mrs. Jones' fall. The burden then shifted to plaintiffs to support their position and show a genuine issue of material fact. *Graham, supra*, 672. Plaintiffs may not rest on mere allegations. *Id.* Plaintiffs argued that defendant knew or should have known that the rug in front of the bottle return was unsafe due to its age and unraveled condition. Plaintiffs did not, however, present any documentary evidence or specific facts to support their allegations. Accordingly, plaintiffs did not meet their burden to establish the existence of a genuine issue of material fact, and summary disposition was properly granted in favor of defendant.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder